Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No.

RONALD B. SHERWOOD,
Petitioner,

v.

HAROLD BROWN, Secretary of Defense,
J. WILLIAM MIDDENDORF, Secretary of the Navy;
CAPTAIN D. B. PRINGOE, Commanding Officer
Naval Air Station Miramar,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GURU TERATH SINGH KHALSA
RAM DAS SINGH KHALSA
708 Montgomery Street
San Francisco, California 94111
(415) 981-1183

Attorneys for Petitioner.

QUESTION PRESENTED

Whether Article 0112 NAVY UNIFORM REGULATION violates the First Amendment to the United States Constitution when applied to a member of the Sikh religion who is required by the tenets of his faith to wear a turban instead of the designated sailor's cap while serving his country in the United States Navy?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Ronald B. Sherwood prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the decision of the United States District Court for the Southern District of California that affirmed the Court Martial decision and the discharge of Petitioner from the United States Navy for wearing a turban as required by the tenets of his religious beliefs instead of the approved sailor's cap as required by Navy regulations.

OPINIONS BELOW

The Opinion of the Court of Appeals, officially reported at 619 F2d 47 (9th Cir. 1980), is printed as Exhibit A in the Appendix.

The Memorandum Decision and Judgment entered in the United States District Court were unreported and are attached as Exhibit B in the Appendix.

JURISDICTION

The judgment of the court of appeals was entered on May 19, 1980. The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1).

REGULATION INVOLVED

ARTICLE 0112 NAVY UNIFORM REGULATIONS (NUR):

1. All Naval personnel shall provide themselves with an adequate supply of the correct uniforms in these regulations and are forbidden to possess or wear any other than the regulation uniform or insignia of their representative grades, corps, or ratings, or to wear decorations, metals, badges, or their ribbons in any way other than prescribed.

STATEMENT OF THE CASE

On or about January 13, 1970, Appellant enlisted in the United States Navy for a period of four years. On November 22, 1973, while Appellant was stationed at the Naval Air Station, Miramar, California, he became a member of the Sikh religion. He vowed to live according to the following fundamental practices of Sikhism:

(1) A Sikh recognizes that there is one God, Almighty, Omnipotent, Omnipresent and Omniscient,

> and in such recognition will rise in the ambrosial hours of the dawn to repeat the praises of the Lord; (2) in recognition of the perfection of God and only of God, a Sikh will not alter his human form from the way the Creator has created it, thereby not removing, or permitting to be removed, any hair from the body, and protecting his human form by wearing the unshorn hair on top of the head in a Rishi knot and covered with a cotton cloth known as a turban; (3) the Word of God, the Truth of Truths recorded in the Siri Guru Granth Sahib, shall be the only Guru that a Sikh shall recognize, and as such a Sikh shall bow to no man; (4) a Sikh shall live an honest and righteous life, being true to the highest ideals of conscientious living, thus leading a spotless life; (5) a Sikh shall not be a burden upon others and must "earn by the sweat of his brow" and share his earnings with those who are in need. (Affidavit of RONALD B. SHERWOOD, Clerk's Transcript on Appeal at pp. 93-96 and 152-153.)

From that date forward, he wore a turban.

On November 26, 1973, Appellant was ordered to remove his turban pursuant to Article 0112 of Navy Uniform Regulations (NUR) which states in relevant part that:

> Article 0112: UNIFORMS TO BE PROVIDED AND WORN
>
> 1. All naval personnel shall provide themselves with an adequate supply of the correct uniforms in these regulations and are forbidden to possess or wear any other than the regulation uniform or insignia of their respective grades, corps, or ratings, or to wear decorations, medals, badges, or their ribbons in any way other than prescribed.

Appellant refused to do so on the grounds that it would violate the exercise of his religious beliefs.

Appellant was charged with violating Article 92 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. §892, for failure to wear the prescribed uniform. On December 19, 1973, Appellant was found guilty of violating Article 92 UCMJ because of his failure to remove his turban. He was demoted from Petty Officer Third Class to Seaman Recruit.

On December 20, 1973, he was unilaterally discharged from the United States Navy for refusal to remove his turban under conditions which prohibited him from re-enlisting in the Navy.

Appellant's administrative appeals to the Judge Advocate General pursuant to 10 U.S.C. §869 and to the Board for Correction of Naval Records pursuant to 10 U.S.C. §1552 were denied.

On January 10, 1977, Petitioner filed a Complaint in the United States District Court for the Southern District of California seeking a Declaration that the Navy's refusal to permit him to wear his turban as a member of the Sikh religion was an unconstitutional infringement of his First Amendment right to the free exercise of his religious beliefs. He also sought reinstatement and monetary damages.

Petitioner's Complaint was dismissed pursuant to a Motion for Summary Judgment on or about August 24, 1978. On May 19, 1980, the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the district court.

REASONS FOR GRANTING THE WRIT

I.

The opinion below presents important constitutional questions regarding the free exercise of religious beliefs in the

context of the dress requirements of the United States Navy. It thereby presents an issue that affects the rights of an entire religious community in the United States, as well as the obligations of the military in allowing members of the Sikh religion to serve their country in the United States Navy.

Although the regulation in question is neutral on its face, it nonetheless is unconstitutional as applied in this case and such attacks are well recognized:

> A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion.

Wisconsin v. *Yoder*, 406 U.S. 205 at 220 (1972) (Citations omitted), see also *Gillette* v. *United States*, 401 U.S. 437,462 (1971).

Further, while courts are justifiably reluctant to meddle in the affairs of the military, *Parker* v. *Levy*, 417 U.S. 733,743 (1974), *U.S. ex rel. Toth* v. *Quarles* 350 U.S. 11, 17 (1955), *Orloff* v. *Willoughby*, 345 U.S. 83,994 (1953), they do have the responsibility to determine whether regulations either directly or indirectly inhibit religious practices. *Gillette* v. *United States*, *supra*, 401 U.S. at 462, *Braunfield* v. *Brown*, 366 U.S. 599 at 607 (1961).

In order for the regulation to withstand the constitutional attack, the Navy must show by "the clearest kind of imperative, and lack of alternative" *Anderson* v. *Laird*, 466 F. 2d 283 at 302, *cert. denied* 409 U.S. 1076 (1972) its justification for the exclusion of Sikhs from its ranks:

> The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.
>
> *Wisconsin* v. *Yoder*, *supra*, 406 U.S. at 215.

In *O'Neill* v. *Dent*, 345 F. Supp. 565 (1973), the court formulated the test to be used in determining the constitutionality of a military regulation when it collides with fundamental rights:

> [T]he military has always occupied a special position and Courts have been reluctant to interfere or take over the job of running the Army. *Orloff* v. *Willoughby* 345 U.S. 83, 93. Consequently, military institutions are allowed a certain amount of latitude of discretion in order to properly discipline and train their members (Citations) . . . . The Court must decide whether the deference to military decision is overcome by the absence of any rational and reasonable relation of the regulations to legitimate military objectives. *Nixon* v. *Secretary of the Navy* 422 F.2d 934 . . . When the military promulgates a regulation which collides with individual rights of its members protected by the Constitution, the Court must determine whether on balance the interests of the Government justify its survival or whether it must yield to the rights of the individual. In the past the Federal Courts have reviewed and invalidated various military orders which interfered with Constitutional rights, mainly First Amendment expressional activities. (Citations). *Id.* at 576-577.

The Court went on to apply the "compelling State interest" test[1] which placed the burden on the military to demonstrate that the regulation was necessary to provide a compelling governmental interest and concluded that the regulation in question (the right of a cadet at a military academy to marry)

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[1] *Sherbert* v. *Werner*, 374 U.S. 398, *NAACP* v. *Button*, 371 U.S. 415, *Wisconsin* v. *Yoder*, 406 U.S. 205.

"failed to demonstrate the clearest kind of imperative" for interference with the cadet's fundamental rights.[2]

The "compelling state interest test" is the appropriate test when a regulation effects a "fundamental right." *Harper* v. *Virginia Board of Elections* 383 U.S. 663, 86 S.Ct. 1079, *Skinner* v. *Oklahoma ex rel. Williamson* 316 U.S. 535, 62 S.Ct. 1110, *Griffin* v. *Illinois* 351 U.S. 12, 76 S.Ct. 585, *Shapiro* v. *Thompson* 394 U.S. 618, 89 S.Ct. 1322, and the Free Exercise of religious beliefs is clearly a "fundamental right."

Respondents fell far short of demonstrating by the "clearest kind of imperative" that there was an overriding and compelling governmental interest in court-martialing and discharging appellant from the United States Navy because he wore a turban as required by the tenets of the Sikh religion rather than the sailor's cap as required by Article 0112 NUR.

The trial court relied exclusively on an affidavit submitted by Rear Admiral C. J. Sieberlich in formulating its decision. Admiral Sieberlich contended that Article 0112 NUR was justified because of the need for neatness, cleanliness, military image and safety.

The Affidavit was uncorroborated, unsubstantiated, conclusionary and did not refer to the position the Petitioner had in the Navy. The trial court found that there was no evidence that

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[2] The court referred to the concurring opinion in *Anderson* v. *Laird*, 466 F.2d 283:

> The question arises whether the Government's use of a practice that bears a religious impress is saved from unconstitutionality because of an overriding State interest in effective training of its military officers. That is the hub of the case as I see it. For the Government to invoke the possibility of justification it must show *the clearest kind of imperative*, and lack of alternative, for the government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that non-religious means will not suffice. *Id.* at 302. (Emphasis added).

justified Article 0112 NUR as applied to Petitioner on the grounds of neatness or cleanliness. It also refused to find that uniform appearance within the Navy to maintain discipline and pride was "in itself a sufficiently strong interest to justify the exclusion of Sikhs from the Navy." It granted the Motion for Summary Judgment on the issue of safety.

While the Affidavit spoke of the possible hazards connected with the wearing of a turban in the selected jobs of aircraft pilots and personnel on flightdecks, it ignored most of the positions held by naval personnel—i.e., radar technicians, lawyers, physicians, electrical technicians, cooks, nuclear engineers, carpenters, supply officers, storekeepers, paymasters, pharmacists, metalsmiths, optical technicians, shore patrol officers, and Petitioner's position as a computer technician.

There are obviously endless numbers of additional positions that Sikhs can maintain without fear of jeopardizing naval operations.

What makes the opinion below especially unacceptable is the fact that the United States Army has been presented with this same matter and has made the following finding:

> (3) The appearance policy with regard to members of the Sikh religion has been reviewed and it is concluded that it serves the Army no useful purpose to preclude, for reasons of religious belief, an otherwise qualified soldier from serving the country. (AR 600-20)[3]

AR 600-20 provides that members of the Sikh religion may serve in the United States Army with turbans rather than the designated Army hats.

While interest in safety is obviously an important aspect of naval operations, it is certainly just as important to the United

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[3] A copy of this regulation is attached as Exhibit C in the Appendix and was part of the record in the courts below.

States Army and other military organizations around the world. The Royal Navy of Great Britain, which certainly recognizes the legitimate needs of safety in its operations, also permits Sikhs to join the service and to wear turbans on duty:

> Royal Navy officers and ratings of Sikh nationality and religion are to be permitted to wear uniform turbans, provided at Crown expense, instead of caps. . . (Letter from Ministry of Defense of Great Britain)[4]

Further, the Occupational Health and Safety Division of the United States Department of Labor (OSHA) has recognized the legitimacy and necessity of Sikhs to wear turbans and exempts members of the Sikh religion from wearing hardhats on federal construction jobs. Field Memorandum Number 75-11 states in relevant part:

> . . . The Sikh Dharma Brotherhood, with Western Hemisphere headquarters at 1620 Preuss Road, Los Angeles, California, has petitioned for exemption from the "hardhat" requirement on the basis of free exercise of religion. The Sikh Dharma Brotherhood has the following as a part of its creed:
>
> > A man shall tie his hair in a rishi knot on the crown of his head to be covered with a cotton cloth known as a turban whenever in public. He is obligated to keep a dastar, (small turban) when he is without his turban.
>
> . . . The Sikh Dharma Brotherhood (is) granted an exemption from wearing hardhats. The granting of the above exemption is based on the provisions of the United States Constitution relating to the free exercise of religion, and the policy expressed in Section

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[4] A copy of said letter is attached as Exhibit D in the Appendix and was part of the record in the courts below.

20(A) (5) of the Williams-Steiger Occupational Safety and Health Act of 1970 respecting religious freedom.[5]

While there may be some positions in the Navy that Sikhs might not be able to participate in because of the necessity of wearing a turban, as there would be for a man with less than 20-20 vision, the across-the-board exclusion of all Sikhs, and Petitioner specifically, violates the free exercise clause of the First Amendment.

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[5] A copy of said memorandum is attached as Exhibit E in the Appendix and was part of the record in the courts below.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Dated: August 8, 1980

GURU TERATH SINGH KHALSA
RAM DAS SINGH KHALSA

Attorneys for Petitioner

(APPENDICES FOLLOW)

MAY 1 - 1980

Exhibit A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD B. SHERWOOD,)

Appellant,) No. 78-2475

v.)

HAROLD BROWN, Secretary of Defense, J. WILLIAM MIDDENDORF, Secretary of the Navy; CAPTAIN D.B. PRINGOE, Commanding Officer, Naval Air Station Miramar,) OPINION

Appellees.)

Appeal from the United States District Court for the Southern District of California

Before: ELY and WALLACE, Circuit Judges, and KING,* District Judge

PER CURIAM:

Sherwood appeals the dismissal on summary judgment of his complaint challenging the constitutionality of his court-martial and discharge from the United States Navy. In November 1973, four years after he enlisted in the Navy, Sherwood took the vows of a member of the Sikh religion. Those vows require, in part, that:

> [A] Sikh will not alter his human form from the way the Creator has created it, thereby not removing or permitting to be removed, any hair from the body, and protecting his human form by wearing the unshorn hair on top of the head in a Rishi knot and covered with a cotton cloth known as a turban; . . . .

---

*The Honorable Samuel P. King, Chief Judge, United States District Court for the District of Hawaii, sitting by designation.

Sherwood refused to comply with Article 0112 of the Navy Uniform Regulations which precludes the wearing of turbans by naval personnel.[1/] He was court-martialed and discharged from the Navy for failure to adhere to the uniform regulations. On January 10, 1977, Sherwood filed suit under 28 U.S.C. § 1331 requesting a declaration that the regulations were unconstitutional as applied to him, reinstatement in the Navy, and monetary damages.

Government regulations which infringe protected religious practice are proscribed by the free exercise clause of the First Amendment unless the Government can demonstrate that the regulation is the least restrictive alternative to meet a compelling state need. Wisconsin v. Yoder, 406 U.S. 205, 220 (1972); Cantwell v. Connecticut, 310 U.S. 296, 306-07 (1940).

The District Court concluded that the Navy's interest in safety was sufficient to meet the compelling need requirement, and that because all naval personnel are subject to military duties which implicate the safety rationale, no less restrictive alternative exists.[2/] Based on the affidavit of a senior naval officer, the District Court found that:

> Whether aboard a ship or aircraft extreme conditions of confinement make safety the touchstone of combat readiness and efficiency. . . . [V]irtually all naval activities are conducted in close proximity to complex machinery of an often hazardous nature. Dangerous operating conditions cannot be tolerated. The accomplishment of an entire naval mission may be impaired by the failure of a single individual to perform his assigned task.
>
> A Sikh cannot, for religious reasons, wear a helmet. [Citation omitted.] Absence of a helmet poses serious safety problems both for the unprotected sailor and for the crew that depends on him. Pilots and aircrewmen are required to wear specially protective helmets. Sailors working on an

aircraft carrier flight deck or around operating aircraft must be similarly protected. All personnel at battle stations wear helmets to protect themselves from missiles such as shrapnel and to cushion their impact with bulkheads and overheads caused by a lurching vessel. A turban does not meet these safety requirements necessitated by both the ordinary and extraordinary activities of the modern, mechanized Navy.

The judgment of the District Court is

AFFIRMED.

FOOTNOTES:

1.

Article 0112: UNIFORMS TO BE PROVIDED AND WORN

1. All naval personnel shall provide themselves with an adequate supply of the correct uniforms in these regulations and are forbidden to possess or wear any other than the regulation uniform or insignia of their respective grades, corps, or ratings, or to wear decorations, medals, badges, or their ribbons in any way other than prescribed.

2.

At oral argument, Sherwood's attorney conceded that, on the record, there was no genuine issue of triable fact. In light of this concession, we are constrained to accept the "findings of fact" of the District Court, insofar as those findings are substantially supported by the record.

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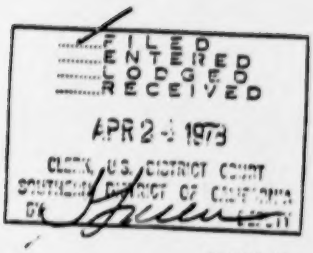

Exhibit B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RONALD B. SHERWOOD,

Plaintiff

v.

HAROLD BROWN, Secretary of Defense, et al.,

Defendants.

Civil No. 77-8-S

MEMORANDUM DECISION

Plaintiff was discharged from the United States Navy because as a newly converted Sikh his religiously dictated appearance and wardrobe failed to conform to Navy regulations. He asks the court to declare that such an application of Navy regulations represents an unconstitutional infringement of his right to practice his religion.

On November 22, 1973, plaintiff, Aviation Electronics Technician Third Class RONALD B. SHERWOOD, United States Navy, took the vows of a Sikh. He vowed to live according to the following fundamental principles of Sikhism:

> (1) A Sikh recognizes that there is One God, Almighty, Omnipotent, Omnipresent and Omniscient, and in such recognition will rise in the ambrosial hours of the dawn to repeat the praises of the Lord; (2) in recognition of the perfection of God and only of God, a Sikh will not alter his human form from the

> way the creator has created it, thereby not removing, or permitting to be removed, any hair from the body, and protecting his human form by wearing the unshorn hair on top of the head in a Rishi knot and covered with a cotton cloth known as a turban; (3) the Word of God, the Truth of Truths recorded in the Siri Guru Granth Sahib, shall be the only Guru that a Sikh shall recognize, and as such a Sikh shall bow to no man; (4) a Sikh shall live an honest and righteous life, being true to the highest ideals of conscientious living, thus leading a spotless life; (5) a Sikh shall not be a burden upon others and must 'earn by the sweat of his brow' and share his earnings with those who are in need.

Affidavit of RONALD B. SHERWOOD, p. 2. At the time of his vows, plaintiff began wearing a turban and did not cut his hair as is required by all members of the Sikh faith.

On November 26, 1973, plaintiff returned to his squadron where an officer ordered him to remove his turban pursuant to Article 0112 of Navy Uniform Regulations. Plaintiff refused to do so on grounds that it would violate his exercise of his religious freedom. Plaintiff was then charged with violations of Articles 90 and 92 of the Uniform Code of Military Justice, 10 U.S.C. §§ 890, 892. On December 19, 1973, plaintiff was convicted of violating Article 92 of the Uniform Code of Military Justice, 10 U.S.C. § 892, for failure to wear the prescribed uniform. He was demoted from Petty Officer Third Class to Seaman Recruit. After again refusing to remove his turban on December 20, 1973, plaintiff was discharged. Plaintiff's appeal pursuant to 10 U.S.C. § 869 was denied by the Judge Advocate General of the Navy. His application to the Board for the Correction of Naval Records pursuant to 10 U.S.C. § 1552 for a reversal of his summary court martial was similarly denied.

On January 10, 1977, plaintiff filed a

complaint in this court seeking a declaration that the prohibition of his turban by the Navy was an unconstitutional infringement of his First Amendment right to the free exercise of religion. He also seeks reinstatement to active duty and damages in excess of $10,000. Plaintiff has moved for a partial summary judgment on the constitutionality of the Navy's uniform regulation as applied in his case. The defendant government opposes plaintiff's motion and has filed a cross-motion for summary judgment. At the court's request, the parties have submitted supplemental affidavits detailing the nature and background of the Sikh religion, plaintiff's commitment to that religion, and the Navy's rationale for its prohibition of non-uniform headgear such as a Sikh's turban.

After reviewing the memoranda of points and authorities, affidavits and all papers filed in this action, the court finds that Article 0112 of Navy Uniform Regulations is not unconstitutional as applied to plaintiff RONALD B. SHERWOOD, a member of the Sikh religion. Accordingly, the court denies plaintiff's motion for a partial summary judgment. Because no issue of material fact remains in dispute, the court grants defendants' motion for summary judgment.

THE FREE EXERCISE OF RELIGION

The free exercise of religion guaranteed by the First Amendment encompasses both the freedom to believe in and act according to one's religious principles. The freedom to believe is absolute. Sherbert v. Werner, 374 U.S. 398, 402 (1963); Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). The freedom to act, however, remains subject to regulation for the protection of society. Cantwell v. Connecticut, supra, 310 U.S. at 304. This "power to regulate must be so exercised as not, in attaining a permissible end, unduly infringe the protected freedom." Id. See, e.g., Wisconsin v. Yoder, 406 U.S.

205, 220 (1972); Sherbert v. Werner, supra, 374 U.S. at 402; Braunfeld v. Brown, 366 U.S. 599, 603 (1961); Reynolds v. United States, 98 U.S. 145, 166 (1879). Thus, the court must determine whether the Navy's regulations governing its military uniforms "unduly infringe" upon plaintiff's right to practice the Sikh religion.

THE BURDEN ON PLAINTIFF'S RELIGION

The Navy's policy towards the uniforms of its personnel is neutral on its face. No argument has been made that these regulations are intended to discriminate against certain religious practices or beliefs. Yet, plaintiff argues that the Navy's uniform policy is unconstitutional as applied in this case. Such a constitutional attack on the application of a governmental regulation has been well recognized by the Supreme Court.

> A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion.

Wisconsin v. Yoder, supra, 406 U.S. at 220 (citations omitted). See Gillette v. United States, 401 U.S. 437, 462 (1971). The facially neutral dress and grooming policy of the Navy certainly does not directly compel all Sikhs to believe or act in ways contrary to their religion. Rather, the burden of the regulations on a Sikh is conditional and indirect. That is, if a member of the Sikh religion chooses to join the Navy, he must conform to the Navy Uniform Regulations. Compare, e.g., Wisconsin v. Yoder, supra; Reynolds v. United States, supra. A Sikh may not practice his religion and be active in the Navy at the same time.

The conditional nature of this burden on a Sikh does not, however, free the government to indirectly

inhibit religious practices. Gillette v. United States, supra, 401 U.S. at 462; Braunfeld v. Brown, supra, 366 U.S. at 607. The prohibition of governmental infringement of religious expressions extends to protect the religious from conditional denials of benefits and privileges offered by the government. Sherbert v. Werner, supra, 374 U.S. at 404. Thus, the Navy can not cavalierly justify its regulations by inviting the plaintiff to join the Army, a branch of the armed forces which exempts Sikhs in part from its regulations governing a soldier's appearance. Although the court has no desire to meddle in the affairs of the military, see Parker v. Levy, 417 U.S. 733, 743 (1974); United States ex rel. Toth v. Quarles, 350 U.S. 11, 17 (1955); Orloff v. Willoughby, 345 U.S. 83, 94 (1953), judicial deference to the decisions of the military is not without limits. See Anderson v. Laird, 466 F.2d 283, 295 (D.C. Cir. 1972), cert. denied, 409 U.S. 1076 (1972). The Navy must present a strong rationale for the application of its dress code to members of the Sikh religion.

> The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.

Wisconsin v. Yoder, supra, 406 U.S. at 215 (emphasis added).

THE NAVY'S INTEREST IN THE UNIFORM APPLICATION OF ITS DRESS CODE

The Navy uniform regulations which govern the uniforms of all naval personnel are based on several elements including neatness, cleanliness, safety and military image. Affidavit of Rear Admiral C. J. Seiberlich, Deputy Chief of Naval Personnel, United States Navy, p. 1. The Navy has presented no evidence that the plaintiff was either sloppy or unclean. Indeed, the court is not aware of any evidence that

would contradict the neatness or cleanliness of members of the Sikh faith. Thus, the Navy's enforcement of its grooming code is justified, if at all, on grounds of military image and safety.

A Sikh's turban does not conform to the Navy's standards for uniform headgear. This nonconformance, the Navy argues, detracts from group identification and adversely affects performance. Id. at p. 4. In support of this argument, the Navy relies on its experience that a person's "pride in his military appearance and the military appearance of his unit is easily translated to pride in his professional performance and creates a standard for others to follow." Id. Evaluation of this argument by the court is hampered by the subjective nature of the Navy's assumption that deviant appearance negatively affects discipline, morale and esprit de corps. The court fully appreciates the tradition of uniform appearance in the military. The court hesitates, however, to find that uniform appearance by itself is a sufficiently strong interest to justify the exclusion of the Sikhs from the Navy.

The Navy's interest in safety presents a more compelling interest in support of the Navy's headgear regulations. Whether aboard a ship or aircraft extreme conditions of confinement make safety the touchstone of combat readiness and efficiency. Unlike the Army, virtually all naval activities are conducted in close proximity to complex machinery of an often hazardous nature. Dangerous operating conditions cannot be tolerated. The accomplishment of an entire naval mission may be impaired by the failure of a single individual to perform his assigned task.

A Sikh cannot, for religious reasons, wear a helmet. Letter from Ram Das Singh Khalsa, attorney for plaintiff, to HAROLD BROWN, defendant (Aug. 4, 1977). Absence of a helmet poses serious safety problems both for the unprotected sailor and for the crew that depends on him. Pilots and

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aircrewmen are required to wear specially protective helmets. Sailors working on an aircraft carrier flight deck or around operating aircraft must be similarly protected. All personnel at battle stations wear helmets to protect themselves from missiles such as shrapnel and to cushion their impact with bulkheads and overheads caused by a lurching vessel. A turban does not meet these safety requirements necessitated by both the ordinary and extraordinary activities of the modern, mechanized Navy.

The incompatibility of a Sikh's appearance with the uniform and protective dress of Navy personnel is further magnified by the uncut beards and hair of all Sikh males. At the time of his demotion and dismissal, the newly converted plaintiff's vow not to cut his hair or beard had not ripened to a point of conflict with Navy grooming regulations. However, the Navy's desire for uniformity and safety directly collides with these unbending tenets of the Sikh faith.

The conflict between a Sikh's uncut hair and beard and Navy regulations is manifest. See Article 0111 of Navy Uniform Regulations. The Navy reemphasizes this conflict by pointing to the safety aspects of its grooming code. Both as to male and female naval personnel, Article 0111 provides:

> In no case shall the bulk or length of hair interfere with the proper wearing of any military headgear.

And while the Navy permits beards to be worn, the "bulk of a beard shall not exceed 1/2 inch and no individual hair more than 3/4 inch, and the beard shall be grown in such a manner as to ensure a proper facial seal of a member of protective masks required to be used by naval personnel." Affidavit of Rear Admiral C. J. Seiberlich, supra, p. 1. Leakage due to the improper fitting of such masks over long beards would therefore pose a serious danger to those who wear an aviator's oxygen mask, a

fire fighter's breathing apparatus, or a Navy MK-5 gas mask. Id. Similarly, the Navy argues that long hair and beards increase the likelihood of safety problems due to the combustibility of long hair in oxygen fires, the tendency of long hair to catch in the type of machinery common aboard ships, and the sanitary risks of long hair and beards in medical and food service areas. Id. at pp. 2-3. Each of these factors underscores the Navy's strong interest in minimizing threats to the safety of its personnel.

It can be argued, of course, that not all Navy personnel are engaged in dangerous activities which are incompatible with the wearing of a beard, long hair and a turban. It follows from such an argument that the Navy could accommodate Sikhs in positions of relative safety. In that way, the Navy could endure the nonconforming appearance of a Sikh while allowing the individual the full range of religious expression. The court cannot agree, however, that such an accommodation by the Navy is mandated by the First Amendment. Special safety status for naval personnel of the Sikh faith would deny Sikhs full opportunities for advancement within the Navy and risk establishing Sikhs as a specially protected naval class. Neither result is desirable or necessary under the First Amendment's protection of the free exercise of religion.

Accordingly, the court finds that the Navy's interest in a uniform appearance and protective clothing and headgear for its personnel is sufficiently strong to overbalance plaintiff's desire to wear the turban of a Sikh while in the Navy. Article 0112 of Navy Uniform Regulations is not unconstitutional as applied to plaintiff RICHARD B. SHERWOOD.

THEREFORE, IT IS ORDERED that plaintiff's motion for a partial summary judgment is denied and defendants'

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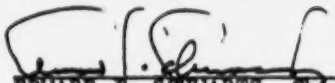
cross-motion for summary judgment is granted.

DATED: April 24, 1978.



EDWARD J. SCHWARTZ, Chief Judge
United States District Court

Copies to all parties.

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BY [illegible] DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RONALD B. SHERWOOD,

Plaintiff

v.

HAROLD BROWN, Secretary of Defense, et al.,

Defendants.

Civ. No. 77-8-S

JUDGMENT

The court having denied plaintiff's motion for a partial summary judgment and granted defendants' motion for a summary judgment,

IT IS ORDERED, ADJUDGED AND DECREED that the above entitled matter is hereby dismissed.

DATED: April 24, 1978

Edward J. Schwartz, Chief Judge
United States District Court

Copies to the parties

5–39. Appearance. *a.* The Army is a uniformed service. Therefore a neat and well-groomed appearance by soldiers is fundamental to the Army, and contributes to building the pride and esprit essential to an effective military force. A vital ingredient of the Army's strength and military effectiveness is the pride and self-discipline which American soldiers bring to their service. It is the responsibility of commanders to insure that military personnel under their command present a neat and soldierly appearance, and it is the duty of each soldier to take pride in his appearance at all times.

b. There are many hair styles which are acceptable in the Army. So long as a soldier's hair is kept in a neat manner, the acceptability of the style will be judged solely by the criteria described below.

c. Haircuts, without reference to style, will conform to the following standards:

(1) The hair on top of the head will be neatly groomed. The length and/or bulk of the hair will not be excessive or present a ragged, unkempt or extreme appearance. Hair will present a tapered appearance and, when combed, it will not fall over the ears or eyebrows or touch the collar except for the closely cut hair at the back of the neck. The so-called "blockcut" fullness in the back is permitted in moderate degree. In all cases, the bulk or length of hair will not interfere with the normal wear of all standard military headgear.

(2) If the individual desires to wear sideburns, they will be neatly trimmed. The base will be a clean shaven horizontal line. Sideburns will not extend downward beyond the lowest part of the exterior ear opening.

(3) The face will be clean shaven except that mustaches are permitted. If a mustache is worn, it will be kept neatly trimmed and tidy. No portion extending beyond the corners of the mouth will fall below a line parallel with the bottom of the lower lip. Goatees and beards are not authorized.

(4) The wearing of a wig or hair piece by male personnel while in uniform or on duty is prohibited except to cover natural baldness or physical disfiguration caused by accident or medical procedure. When worn it will conform to the standard haircut criteria as stated.

(5) Figure 5–1 illustrates various hairstyles, mustaches and sideburns which are acceptable according to these criteria. No style longer than the ones illustrated is permitted. DA Poster 600–20 depicting this policy and the approved styles in full color will be distributed to company level. The poster will be prominently displayed on unit bulletin boards, in offices, and in barber shops.

d. Male members of the Reserve components may wear a wig or hair piece during unit training assemblies and when serving on active duty for training for periods of 30 days or less or on full time training duty for periods of 30 days or less, if it conforms to the standard haircut criteria stated above and does not interfere with performance of duty. When ordered for a period of more than 30 days to active duty, active duty for training, or full time training duty, the wearing of a wig or hair piece by male members of the Reserve components in uniform or on duty is prohibited except as provided in *c(4)* above.

5–40. Exceptions to appearance standards. Exceptions to appearance standards may be granted to members of the Sikh religion in accordance with provisions of section VII.

Section VII. PROCEDURES FOR DOCUMENTING RELIGIOUS BELIEFS

5–41. General. The Sikh religion requires the wear of unshorn hair. Sikhism also requires members to wear a turban, a steel bracelet, a comb and special underpants. Because Sikhs may desire to enlist in the Army or service members may convert to Sikhism subsequent to enlistment, the procedures presented herein have been established.

5–42. Procedures for documenting religious beliefs. If a soldier claims that he is unable, by virtue of being a member of the Sikh religion, to conform to a provision of Army personal appearance or uniform regulations, he must—

a. Be instructed by his unit commander to obtain from the policy making body of his religious group, within 30 days, a statement which attests that he is a member in good standing of that religious group and that the religious practice in question is a requirement of the religious group which may not be waived.

b. Appear before a board convened by the general court-martial authority to determine the member's sincerity and validate the supporting documentation furnished by the religious group.

5–43. Exception prior to board proceedings. During the period in which the documentation is being obtained, the service member will be allowed to conform to his religious practice as a temporary exception to personal appearance or uniform regulations. This temporary exception to policy will not exceed a period of 30 days.

5–44. Actions required of the board. *a.* At the conclusion of the 30-day period (or sooner with the service member's consent) the member will appear before a board of three or more commissioned officers convened by the commander exercising general court-martial jurisdiction. (AR 15–6 will apply.) The purpose of the board will be to make findings of fact and recommendations. As a minimum, the board will make the following findings of fact:

(1) Whether the member is a sincere, bona fide member of the Sikh religion.

(2) Whether his religious requirements preclude him from complying with the Army's dress and appearance standards.

b. Based on the findings, the board will make one of the following recommendations:

(1) That authorized deviations to dress and appearance standards be granted.

(2) Retention on active duty with no exception to dress and appearance standards (determination of nonsincerity, etc.).

5–45. Actions of the GCM convening authority. Upon receipt of the board recommendations, the GCM convening authority will make the final determination whether the member will be retained on active duty, with or without exceptions to dress and appearance standards. If the GCM convening authority determines that the member is a bona fide Sikh, and cannot comply with appearance standards because of sincere religious convictions, the member will be given appropriate written permission to deviate from appearance standards. If, in the future, the member's sincerity or standing within the Sikh community becomes questionable, he may be required to again appear before a board of officers for reconsideration and redetermination of his status.

5–46. Authorized exceptions. *a.* If a decision is made by the GCM authority to authorize a deviation from uniform and appearance standards, such information shall be filed in the permanent section of the MPRJ pending a change to AR 640–10.

b. Exceptions will be granted for—

(1) The wear of unshorn hair.

(2) The wear of a beard.

(3) The wearing of special underpants.

(4) The wear of the bracelet.

(5) The carrying of the comb.

(6) The wear of a turban except that, when required, protective headgear will be worn over or in lieu of the turban.

c. The actual carrying of the sword is not authorized because members of the Sikh religion are permitted by the tenets of their religion to carry a sword symbolically (e.g., a photograph thereof, etc.).

d. Should the GCM convening authority determine that the service member is not a sincere, bona fide Sikh, no exception to uniform or appearance standards will be granted and the member shall be so notified.

e. Nothing contained herein is intended to limit the existing authority of a commander to recommend or initiate administrative separation proceedings under applicable regulations.

5–47. Actions prior to enlistment. Those members of the Sikh religion who desire to enlist in the Army and desire an exception to Army uniform and appearance standards as specified above will present themselves with the required documentation before a board of officers convened by the appropriate GCM convening authority at the nearest US Army installation. The GCM convening authority will then take those actions specified in paragraphs 5–45 and 5–46 prior to the individual's enlistment.

Exhibit D

MINISTRY OF DEFENCE
Main Building Whitehall London SW1A 2HB
Telephone 01-218 (Direct Dialling)
01-218 9000 (Switchboard)

Your reference

Sardarni Sahiba
Kartar Kaur Khalsa
30 King Edward's Gardens
Acton
London W3 9NG

Our reference
D/DS14/103/1/1
Date
16 December 1977

Dear Sardarni Sahiba,

Thank you for your letter of 14 October requesting details of Service dress regulations relating to Sikhs.

The following are extracts from Service regulations covering the wearing of turbans:

Royal Navy

All officers and ratings of Sikh nationality and religion are to be permitted to wear uniform turbans, provided at Crown expense, instead of caps and to keep their hair long, if they so wish.

The uniform turban is to conform to the Indian Navy pattern, as follows:

a. The turban consists of a pugree and a headband

b. The pugree is a strip of any suitable material (soft muslin is normally used) long enough to go round the head six times, crossing over the centre, and folded to a uniform width of about 2½ in. throughout. It must cover the hair completely, reacting to the nape of the neck, and from six overlapping layers, evenly spaced and clearly seen on either side of the head. It is secured by folding at the back, with no loose ends.

c. The headband is a straight band of the same material worn round the forehead, under the pugree, with a triangle of 1 in base showing in the centre of the forehead where the two sides of the pugree separate after crossing over.

A navy blue pugree and a white headband are to be worn with blue uniform, white pugree and blue headband with tropical uniform.

Army

Sikhs enlisted into the British Army are to wear an outer turban (pugri) of cotton six yards long and thirty two inches wide and an inner turban (pag) of similar cloth five yards long and eight inches wide. The outer turban or pugri is to be the same colour as the top of the cap, Service, and the inner turban or pag is to be the facing colour as shown in the Army List for the regiment or corps to which

he belongs. The outer and inner turbans are to be provided locally. The regimental cap badge is to be worn on the front of the head-dress. The cap badge fastenings are to be modified locally as required.

RAF

When the prior authority of the Ministry of Defence has been given RAF officers and airmen of Sikh nationality and religion are permitted to wear turbans of the approved pattern, instead of caps, and to keep their hair long, if they so wish. The components of the turban consist of a puggree and headband of RAF ensign blue colour. The appropriate cap badge is to be affixed to the puggree with its base at the apex of the triangle of the headband.

There are no regulations covering the wearing of the kirpan. I hope the above information is of assistance to you.

Yours sincerely,

J. H. Vaughan

J H VAUGHAN

Exhibit E

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210

FEB 4 1975

FIELD INFORMATION MEMORANDUM #75- 11

TO: ASSISTANT REGIONAL DIRECTORS/OSH

Subject: Exemption from Wearing Hard Hats, Old Order Amish and Sikh Dharma Brotherhood

This memorandum supersedes OSHA Program Directive #100-16, dated November 15, 1972.

The Old Order Amish requested a determination of the applicability of OSHA requirements to the wearing of "hard hats" while working in carpentry trades and construction. The Old Order Amish dress is part of their religious practice. For example, the wide-brimmed black felt hat is worn by members of the Old Order Amish even when working, and it is considered a breach of Amish religious principles to wear a "hard hat."

Similarly, the Sikh Dharma Brotherhood, with Western Hemisphere headquarters at 1620 Preuss Road, Los Angeles, California, has petitioned for an exemption from the "hard hat" requirement on the basis of free exercise of religion. The Sikh Dharma Brotherhood has the following as a part of its creed:

> "The man shall tie his hair in a Rishi knot on the crown of his head to be covered by a cotton cloth known as a turban whenever in public. He will be obliged to keep a dastar (small turban) when he is without his turban."

The Old Order Amish and the Sikh Dharma Brotherhood are both granted an exemption from wearing hard hats. The granting of the above exemption is based on the provisions in the United States Constitution relating to the free exercise of religion, and the policy expressed in Section 20(a)(5) of the Williams-Steiger Occupational Safety and Health Act of 1970 respecting religious freedom.

Citations shall not be issued for failure of members of the Old Order Amish or the Sikh Dharma Brotherhood to wear hard hats. Employers of members of these groups shall not be required to provide protective head equipment for their use as long as such employees have informed their employers of their religious objection to the wearing of hard hats.

All other requirements of the Act and its standards shall be adhered to by affected employers and members of the Old Order Amish and the Sikh Dharma Brotherhood.

for Richard P. Wilson

Barry J. White
Associate Assistant Secretary
for Regional Programs

Supreme Court, U. S.
FILED
SEP 24 1980
MICHAEL RODAK, JR., CLERK

No. 80-218

In the Supreme Court of the United States

OCTOBER TERM, 1979

RONALD B. SHERWOOD, PETITIONER

v.

HAROLD BROWN, SECRETARY OF DEFENSE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

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Constitution and regulation:

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Petitioner contends that a Navy uniform regulation forbidding the wearing of any uniform or insignia except those prescribed by the Navy (Article 0112, Navy Uniform Regulations)[1] is, as applied to him, an unconstitutional impairment of his right to free exercise of religion.

1. Petitioner was court martialed and subsequently discharged from the Navy after repeatedly refusing to remove a turban he wore in lieu of a regulation sailor's

[1]This regulation provides (Pet. App. A4):

> All Naval personnel shall provide themselves with an adequate supply of the correct uniforms in these regulations and are forbidden to possess or wear any other than the regulation uniform or insignia of their representative grades, corps, or ratings, or to wear decorations, medals, badges, or their ribbons in any way other than prescribed.

cap. He argued throughout the military proceedings and this litigation that the religion to which he converted after three years of Naval service, Sikhism, requires the wearing of a turban (Pet. App. B1-B2).[2] After exhausting administrative appeals, petitioner brought suit in the United States District Court for the Southern District of California seeking a declaration that the Navy uniform regulation, as applied to him, impermissibly burdened his First Amendment religious liberty. Petitioner also sought reinstatement and damages (*id.* at B2-B3). The district court granted the government's motion for summary judgment (Pet. App. B1-B9), holding that "the Navy's interest in a uniform appearance and protective clothing and headgear for its personnel is sufficiently strong to overbalance [petitioner's] desire to wear the turban of a Sikh while in the Navy" (*id.* at B8). The court of appeals affirmed (Pet. App. A1-A3).

2. The decision below is correct, is consistent with the decisions of this Court, and does not conflict with any decision of another court of appeals. Therefore, further review is unwarranted.

Both courts below adopted the position that the compelling state interest-least restrictive alternative test articulated in *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), should be applied here and concluded that the Navy's safety interests were sufficiently compelling and the regulation sufficiently narrow to satisfy that standard. There is ample evidence in the record to support this conclusion (Pet. App. B6-B8, A2-A3).

However, even assuming that the district court's findings were inadequate to establish a compelling governmental interest or no less restrictive alternative, the

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[2]That the wearing of a turban is a tenet of the Sikh religion was not contested by the Navy.

decision below is sustainable on the basis of *Brown* v. *Glines*, 444 U.S. 348 (1980). In *Brown*, this Court reaffirmed that the military is, " 'by necessity, a specialized society separate from civilian society,' " and that because of its peculiar and exceedingly important mission with its attendant needs for discipline, efficiency and reliability, " 'a different application' " of First Amendment protections is required (444 U.S. at 354, quoting *Parker* v. *Levy*, 417 U.S. 733, 743, 758 (1974)). Thus, while military personnel are entitled to First Amendment protection, their rights "must yield somewhat ' "to meet certain overriding demands of discipline and duty * * * " ' " (*ibid.*, quoting *Parker* v. *Levy*, *supra*, 417 U.S. at 744, and *Burns* v. *Wilson*, 346 U.S. 137, 140 (1953)). Accordingly, the proper test in this case is whether the military regulation in question restricts First Amendment freedoms[3] "no more than is reasonably necessary to protect [a] substantial governmental interest" (444 U.S. at 355) "unrelated to the suppression of free expression" (*id.* at 354).

The evidence presented to the district court by the government plainly satisfied this burden. The requirement that all Navy personnel wear military headgear was demonstrated to be reasonably necessary to further a substantial Navy interest in safety, an interest far removed from the suppression of religious liberty.

Petitioner's reliance (Pet. 5) on *Anderson* v. *Laird*, 466 F. 2d 283 (D.C. Cir.), cert. denied, 409 U.S. 1076 (1972), is misplaced. At issue in *Anderson* was the constitutionality of compulsory chapel attendance at the military

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[3]While *Brown* and earlier cases such as *Greer* v. *Spock*, 424 U.S. 828 (1976), address the speech and press guarantees of the First Amendment, there is no apparent justification for treating the religion clauses any differently.

academies. The court found that any form of compelled worship offended the core values of the First Amendment and that the regulation there at issue was a paradigm of the kind of governmental abuse the framers of the Amendment sought to prevent. The present case, however, is clearly distinguishable in that it involves, as the district court observed (Pet. App. B8), a requested exemption or accommodation not required by the First Amendment. The Navy *may* grant, as the Army has granted (Pet. 8), persons of the Sikh faith an exemption from the uniform regulations, but it is not *compelled* to do so. Cf. *Gillette* v. *United States*, 401 U.S. 437, 461 n. 23 (1971) (suggesting that exemptions for conscientious objectors from military service, while a legitimate exercise of legislative discretion, are not mandated by the Free Exercise Clause).[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

SEPTEMBER 1980

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[4]As the district court observed (Pet. App. B6), "[u]nlike the Army, virtually all naval activities are conducted in close proximity to complex machinery of an often hazardous nature. Dangerous operating conditions cannot be tolerated. The accomplishment of an entire naval mission may be impaired by the failure of a single individual to perform his assigned task."